

111TH CONGRESS
1ST SESSION

H. R. 3145

To amend the securities laws to prohibit credit default swaps and to provide the Securities and Exchange Commission with the authority to regulate swap agreements.

IN THE HOUSE OF REPRESENTATIVES

JULY 9, 2009

Ms. WATERS introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To amend the securities laws to prohibit credit default swaps and to provide the Securities and Exchange Commission with the authority to regulate swap agreements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Credit Default Swap
5 Prohibition Act of 2009”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) Credit default swaps were conceived as in-
2 surance instruments, used to diffuse risk and in-
3 crease liquidity throughout our lending system.

4 (2) The credit default swap market has grown
5 over the past decade to include contracts that are
6 entered into by persons with no economic interest in
7 the contract's underlying reference event, also known
8 as naked credit default swaps.

9 (3) Certain parties wrote credit default swap
10 contracts without posting collateral, leaving them
11 overexposed to certain asset classes and creating a
12 systemic risk.

13 (4) Unconnected and uncollateralized specula-
14 tion creates an unnecessary risk for our financial
15 system.

16 (5) Credit default swaps have proved to be
17 harmful financial instruments and have caused sig-
18 nificant wealth destruction during our economic cri-
19 sis.

20 (b) PURPOSE.—The purposes of this Act are—

21 (1) to allow the Securities and Exchange Com-
22 mission to have oversight over all security-based
23 swap agreements; and

24 (2) to prevent further damage to our economy
25 by prohibiting credit default swaps.

1 **SEC. 3. ESTABLISHING SECURITIES AND EXCHANGE COM-**
2 **MISSION OVERSIGHT OF CREDIT DEFAULT**
3 **SWAPS.**

4 (a) DEFINITION OF CREDIT DEFAULT SWAP.—

5 (1) Section 2(a) of the Securities Act of 1933
6 (15 U.S.C. 77b(a)) is amended by adding at the end
7 the following:

8 “(17) CREDIT DEFAULT SWAP.—The term
9 ‘credit default swap’ means—

10 “(A) a swap agreement (as such term is
11 defined in section 206A of the Gramm-Leach-
12 Bliley Act) that protects a party to such agree-
13 ment against the risk of a loss of value because
14 of the occurrence or non-occurrence of an event
15 or contingency specified in such agreement re-
16 lating to a security, loan, or other reference
17 asset; and

18 “(B) such other forms of credit risk pro-
19 tection as the Commission may, by rule, pre-
20 scribe as necessary or appropriate in the public
21 interest or for the protection of investors.”.

22 (2) Section 3(a) of the Securities Exchange Act
23 of 1934 (15 U.S.C. 78c(a)) is amended by adding at
24 the end the following:

25 “(65) CREDIT DEFAULT SWAP.—The term
26 ‘credit default swap’ means—

1 “(A) a swap agreement (as such term is
2 defined in section 206A of the Gramm-Leach-
3 Bliley Act) that protects a party to such agree-
4 ment against the risk of a loss of value because
5 of the occurrence or non-occurrence of an event
6 or contingency specified in such agreement re-
7 lating to a security, loan, or other reference
8 asset; and

9 “(B) such other forms of credit risk pro-
10 tection as the Commission may, by rule, pre-
11 scribe as necessary or appropriate in the public
12 interest or for the protection of investors.”.

13 (b) SECURITIES ACT JURISDICTION OVER SWAPS.—

14 Section 2A(b) of the Securities Act of 1933 (15 U.S.C.
15 77b–1(b)) is amended—

16 (1) in paragraph (1), by striking “does not”
17 and inserting “shall”;

18 (2) by amending paragraph (2) to read as fol-
19 lows:

20 “(2) The Commission may require the registra-
21 tion of any security-based swap agreement under
22 this title.”; and

23 (3) by amending paragraph (3) to read as fol-
24 lows:

1 “(3) The Commission may promulgate rules, in-
2 interpret rules, enforce rules, and issue orders of gen-
3 eral applicability under this title in a manner that
4 imposes or specifies reporting or recordkeeping re-
5 quirements, procedures, or standards as prophylactic
6 measures against fraud, manipulation, or insider
7 trading with respect to any security-based swap
8 agreement.”.

9 (c) SECURITIES EXCHANGE ACT JURISDICTION
10 OVER SWAPS.—Section 3A(b) of the Securities Exchange
11 Act of 1934 (15 U.S.C. 78c–1(b)) is amended—

12 (1) in paragraph (1), by striking “does not”
13 and inserting “shall”;

14 (2) by amending paragraph (2) to read as fol-
15 lows:

16 “(2) The Commission may require registration
17 of any security-based swap agreement under this
18 title.”; and

19 (3) by amending paragraph (3) to read as fol-
20 lows:

21 “(3) The Commission may promulgate rules, in-
22 interpret rules, enforce rules, and issue orders of gen-
23 eral applicability under this title in a manner that
24 imposes or specifies reporting or recordkeeping re-
25 quirements, procedures, or standards as prophylactic

1 measures against fraud, manipulation, or insider
2 trading with respect to any security-based swap
3 agreement.”.

4 (d) TECHNICAL AND CONFORMING AMENDMENT.—

5 (1) Section 17 of the Securities Act of 1933 (15
6 U.S.C. 77q) is amended by striking subsection (d).

7 (2) Section 9 of the Securities Exchange Act of
8 1934 (15 U.S.C. 78i) is amended by striking sub-
9 section (i).

10 (3) Section 15 of the Securities Exchange Act
11 of 1934 (15 U.S.C. 78o) is amended by striking sub-
12 section (i) (as added by section 303(f) of the Com-
13modity Futures Modernization Act of 2000).

14 (4) Section 16 of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78p) is amended by striking
16 subsection (g).

17 (5) Section 20 of the Securities Exchange Act
18 of 1934 (15 U.S.C. 78t) is amended by striking sub-
19 section (f).

20 (6) Section 21A of the Securities Exchange Act
21 of 1934 (15 U.S.C. 78u–1) is amended by striking
22 subsection (g).

1 **SEC. 4. PROHIBITION ON CREDIT DEFAULT SWAPS.**

2 The Securities Exchange Act of 1934 is amended by
3 inserting after section 7 (15 U.S.C. 78g) the following new
4 section:

5 **“SEC. 7A. PROHIBITION ON CREDIT DEFAULT SWAPS.**

6 “It shall be unlawful for any person to enter into a
7 credit default swap agreement or contract.”.

8 **SEC. 5. EFFECTIVE DATE.**

9 This Act and the amendments made by this Act shall
10 take effect with respect to swap agreements (as such term
11 is defined in section 206A of the Gramm-Leach-Bliley
12 Act) and credit default swaps (as such term is defined in
13 section 3(a)(65) of the Securities Exchange Act of 1934
14 (15 U.S.C. 78c(a)(65))) entered into after the end of the
15 180-day period beginning on the date of the enactment
16 of this Act.

○